



June 13, 2017

The Honorable Ron Johnson
Chairman, Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter dated May 19, 2017, requesting information regarding unobligated balances in U.S. General Services Administration (GSA) accounts.

The Balances of Budget Authority report referenced in your letter includes a table of unexpired unobligated balances, Total Unexpended Balances By Agency (Table 2). Of the \$6.2 billion in unobligated funds that GSA held at the end of fiscal year (FY) 2015, all was in unexpired accounts. As part of the FY 2018 President's budget, the administration released an updated Total Unexpended Balances By Agency table in the FY 2018 Balances of Budget Authority report¹ that shows \$7.7 billion in unobligated funds at the end of FY 2016. Consistent with prior reports, this table shows only unexpired unobligated balances.

Please see the tables below showing the additional information requested for FY 2017 obligations and outlays through the end of the second quarter of FY 2017:

Obligations, FY 2017 through Q2	
New Obligations, unexpired accounts	\$12,266,510,018.52
Obligations ("upward adjustments"), expired accounts	\$165,819.63
Total Obligations	\$12,266,675,838.15

Net Outlays ² , FY 2017 through Q2	
Net Outlays, unexpired accounts	(\$236,366,378.23)
Net Outlays, expired accounts	\$36,749,238.31
Total Net Outlays	(\$199,617,139.92)

¹ <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/balances.pdf>

² Net outlays are gross outlays net of collections.

An identical letter has been sent to Senator McCaskill. If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Brennan Hart III', with a stylized flourish at the end.

P. Brennan Hart III
Associate Administrator



June 1, 2017

The Honorable Claire C. McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator McCaskill:

Thank you for your letter dated May 11, 2017, concerning the U.S. Government Accountability Office (GAO) report entitled "GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners" (GAO-17-195). The U.S. General Services Administration's (GSA) responses to your five specific questions are enclosed.

Additionally, in response to GAO's report, on March 27, 2017, GSA issued a formal policy memorandum (Memo) entitled, "LEASING ALERT (LA-FY17-06) – Implementing GAO's Recommendation Regarding Foreign Ownership of High-Security Leased Space."

The Memo addresses GAO's key recommendation that GSA determine whether the beneficial owner of high-security leased space is a foreign entity and, if so, share that information with the tenant agency for any needed security mitigation measures. GSA's Memo applies beyond GAO's recommendation by also including lease acquisitions designated at all Facility Security Levels (FSL).

The Memo is accessible at the following website available to the public:
<https://www.gsa.gov/portal/getMediaData?mediaId=158062>. The two Attachments to the Memo are located respectively at the following web links:
<https://www.gsa.gov/portal/getMediaData?mediaId=158070> (Attachment 1) and
<https://www.gao.gov/assets/690/681883.pdf> (Attachment 2).

An identical letter has been sent to your colleagues. If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Brennan Hart III".

P. Brennan Hart III
Associate Administrator for Congressional Intergovernmental Affairs

Enclosure

cc: The Honorable Carole Fortine Ochoa

ENCLOSURE**U.S. General Services Administration (GSA) Responses to Senators Portman, Carper, and McCaskill**

GSA's responses follow the questions from the May 11, 2017, letter:

1. GAO recommends that GSA determine whether a foreign entity is the ultimate owner of high-security space leased by GSA, and, if so, to share that information with the tenant agencies so they can adequately assess and mitigate any security risk. Please provide information demonstrating how GSA is complying with this recommendation.

The aforementioned GSA Memo issued on March 27 provides guidance that requires GSA Leasing Specialists and GSA Lease Contracting Officers (LCOs) to determine whether the beneficial ownership of leased space is identified as a foreign-owned entity and to notify the client agency in such instances, so that the agency can take any needed security mitigation measures. The Memo implements GAO's key recommendation and extends its application beyond the report's recommendation by including lease acquisitions designated at all FSLs.

As noted in Attachment 1 to the Memo, GSA LCOs are to follow a step-by-step process using the System for Award Management (SAM) at www.sam.gov and the Defense Logistics Agency (DLA) CAGE website to identify whether an apparent successful offeror has self-certified as being a foreign entity, and, if so, the origin of country said foreign entity resides.

When a GSA LCO determines that an apparent successful offeror has indeed self-certified via SAM as being a foreign entity, the LCO is required to inform the appropriate client agency point of contact, in writing, of the foreign ownership, identifying the country associated with the ownership entity. This agency notification is solely for the purposes of advising the tenant agency so that they can implement appropriate security countermeasures commensurate with the potential risk, if any.

It should be noted that the steps outlined in Attachment 1 to the Memo must also be followed as part of the change of ownership/novation process for leased buildings at all FSLs.

2. Please provide the number of GSA leases with foreign entity ownership and list the agencies with leases in these buildings.

A recent comparison of the lease inventory to the SAM self-certified data entered by the users identified 35 GSA leases owned by a foreign entity. Below is a list of agencies located in these 35 leases. GSA is in the process of notifying those agencies.

Agency Name	Agency RSF
DEPARTMENT OF AGRICULTURE	3,672
DEPARTMENT OF COMMERCE	2,330
DEPARTMENT OF ENERGY	30,193
DEPARTMENT OF HEALTH & HUMAN SERVICES	52,506
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	29,413
DEPARTMENT OF JUSTICE	163,199
DEPARTMENT OF LABOR	4,256
DEPARTMENT OF STATE	2,109
DEPARTMENT OF THE INTERIOR	21,631
DEPARTMENT OF THE TREASURY	26,910
DEPARTMENT OF VETERANS AFFAIRS	222,282
DHS OFFICE OF THE SECRETARY	84,830
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	46,441
JUDICIARY	57,282
NATIONAL LABOR RELATIONS BOARD	20,050
OFFICE OF THE SECRETARY OF DEFENSE	38,062
SMALL BUSINESS ADMINISTRATION	1,776
SOCIAL SECURITY ADMINISTRATION	15,528
Total	822,470

3. Please identify any federal agencies that have received notice of potential security risks associated with leasing space in a building owned by a foreign entity.

Since the date the Memo was issued on March 27 to require GSA LCOs to notify a tenant agency when an apparent successful offeror has self-certified via SAM as being a foreign-owned entity, or when a change of ownership/novation occurs where a foreign-owned entity is involved, GSA is aware of one such instance of notification. GSA notified the U.S. Department of Justice (DOJ) – Federal Bureau of Investigation (FBI) field office location at 5425 W. Amelia Earhart Drive, Salt Lake City, UT, that a novation would occur where a foreign-owned entity would be purchasing the building.

GSA is in the process of notifying, all affected agencies in the 35 leases identified above and will complete the notifications by the end of June 2017.

4. What steps do GSA and other federal agencies take to mitigate security concerns posed by high-security space leased in foreign-owned buildings? Are there best practices used by agencies, such as the FBI or DEA? If so, is this information shared across the federal government?

The steps, policies, and standards GSA and all non-military Federal agencies take to mitigate security concerns in buildings where Federal agencies are housed are set forth by the Interagency Security Committee (ISC). The ISC's mission is to "enhance the quality and effectiveness of physical security in and the protection of buildings and non-military federal facilities in the United States" (see ISC's website at <https://www.dhs.gov/interagency-security-committee>). The ISC security standards, recommendations, and best practices apply to all non-military Federal facilities in the United States, to include both Government-owned and leased space. ISC's membership is made up of over 60 Federal agencies and departments.

GSA includes the ISC security countermeasures adopted by the tenant agency in GSA solicitations for leased space. The best practices to mitigate security risks posed by foreign-owned entities for agencies to adopt, including DOJ – Drug Enforcement Administration (DEA) and FBI, are set forth by the ISC. The ISC meets regularly to update security standards, countermeasures, and policies and then shares that information with all non-military Federal agencies to implement in Federal facilities, both owned and leased.

5. What guidance does GSA provide to agencies with independent statutory leasing authority regarding leasing space from foreign entities? Please provide a copy of any such guidance.

GSA does not have authority over the leasing activities conducted by other Federal agencies with independent statutory leasing authority. Agencies that have their own independent authority, though, often use GSA forms, templates, policies, and procedures, all of which are openly available online at gsa.gov. Like with many of GSA's leasing forms, templates, policies, and handbooks, the policy Memo on implementing GAO's recommendation on foreign ownership has been posted on GSA's public website at the links provided above for agencies with independent statutory leasing authority to view.



May 23, 2017

The Honorable John Barrasso
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Barrasso:

Thank you for your letter dated May 9, 2017, to Acting Administrator Timothy O. Horne regarding an April 25, 2017, letter from Citizens for Responsibility and Ethics in Washington (CREW) to the U.S. Senate Committee on Environment and Public Works (Committee). In its letter, CREW requested that the Committee review and investigate the U.S. General Services Administration's (GSA) determination that the Trump Old Post Office LLC is in full compliance with Section 37.19 of the lease with GSA. The Acting Administrator has referred your letter to me for response.

In particular, your May 9 letter asks GSA to address whether "any of the information described in [CREW's letter was] unavailable or unknown to the agency's Contracting Officer at the time of his review and compliance determination." The May 9 letter further asks that if any of the unavailable or unknown information was unavailable or unknown to the Contracting Officer, whether any such new information would be considered material. Lastly, assuming any such new information rises to the level of materiality, the May 9 letter asks what steps GSA is taking in response to any such new, material information. Following GSA's review of the CREW letter, it does not contain any information that would lead GSA to revisit this matter.

Please note that the Contracting Officer responsible for the lease issued a detailed determination that included approximately 160 pages of supporting documentation.¹ GSA posted the Contracting Officer's letter and supporting documentation to its Freedom of Information Act Reading Room.² CREW directly cites this documentation in its April 25 letter.³

The only information set forth in CREW's letter that was unknown to the Contracting Officer at the time of his review is included in the section entitled, "Revenue Generated

¹ Letter from Kevin Terry (March 23, 2017), available at <https://www.gsa.gov/portal/content/305477>.

² See *id.*

³ See CREW letter, pages 2-3, n. 9-14.

by Trump OPO."⁴ In particular, the Contracting Officer did not review Mr. Jared Kushner's personal public financial disclosure report. The clause at issue in the lease (Section 37.19) does not apply to Mr. Kushner. Second, this section of CREW's letter focuses on the notion that the President might benefit, whether now or in the future, from profits generated by the lease, and that doing so constitutes a violation of Section 37.19. The Contracting Officer's determination addresses how the Trump Old Post Office LLC will handle distributions to its members, including DJT Holdings LLC.⁵

At its core, the CREW letter is a restatement of a position that the Contracting Officer failed to provide a sufficient legal or rational basis for the determination that the Trump Old Post Office LLC is in full compliance with Section 37.19.⁶ GSA disagrees with this representation.

If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,



P. Brennan Hart III
Associate Administrator

⁴ Regarding the statements allegedly attributable to Mr. Michael Gelber, GSA does not consider the statements attributable to Mr. Gelber as "new information." See CREW letter, pages 2 and 4. During an in-person meeting with representatives from your staff on Friday, March 31, 2017, Mr. Gelber disavowed making any such statements.

⁵ See, *supra*, n.1 on page 7 and pages 38-40.

⁶ See, e.g., *CREW Statement on GSA Trump Hotel Decision*, available at <https://www.citizensforethics.org/press-release/crew-statement-gsa-trump-hotel-decision/> (March 23, 2017).



June 29, 2017

The Honorable Tom Carper
Ranking Member
Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Dear Senator Carper:

Thank you for your letters to Acting Administrator Timothy O. Horne dated April 6, 2017, and June 6, 2017, regarding the lease agreement for the Old Post Office (OPO) building in Washington, DC, and the U.S. General Services Administration's (GSA) policy regarding responding to congressional oversight requests. Your inquiries have been referred to me for response.

GSA responded to your previous requests for information pertaining to the OPO building lease on January 5, 2017, January 27, 2017, and April 21, 2017. GSA also provided briefings on this matter to your staff on December 14, 2016, and March 31, 2017. Additionally, on March 23, 2017, GSA provided the Contracting Officer's decision and accompanying documents to your staff. During the March 31 briefing, GSA addressed the issues raised in your correspondence, including the lease procurement process, the terms of the lease, the tenant's organizational structure, and GSA's Contracting Officer's determination that the tenant is in full compliance with Section 37.19, and that the lease is valid and in full force and effect.

Per subsection 1.602-1 of the Federal Acquisition Regulation: "Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings." GSA's responsibility is to ensure that terms and conditions of the lease GSA signed are fully enforced.

With regard to your concerns about conflicts of interest and constitutional matters, as GSA indicated in briefings to your staff and prior correspondence, it is the responsibility of other Federal entities, including the Office of Government Ethics, the U.S. Department of Justice's Office of Legal Counsel, and the White House Counsel, to evaluate those issues.

For more information on the terms and conditions of the OPO building lease, and for

related documentation and communications between GSA and various organizations and entities, please visit www.gsa.gov/portal/content/305477.

With regard to your inquiry about GSA's responsiveness to congressional inquiries and requests, GSA intends to respond to all congressional inquiries. However, for oversight requests, please see the enclosed *Letter Opinion for the Counsel to the President*. In this Letter, the U.S. Department of Justice's Office of Legal Counsel determined that:

...the constitutional authority to conduct oversight—that is, the authority to make official inquiries into and to conduct investigations of Executive Branch programs and activities—may be exercised only by each chamber of Congress or, under existing delegations, by committees and subcommittees (or their chairmen). Individual members of Congress, including ranking minority members, do not have the authority to conduct oversight in the absence of a specific delegation by a full house, committee, or subcommittee.

The Letter also states:

Accordingly, the Executive Branch's longstanding policy has been to engage in the established process for accommodating congressional requests for information only when those requests come from a committee, subcommittee, or chairman authorized to conduct oversight.

If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,



P. Brennan Hart III
Associate Administrator

Enclosure



June 29, 2017

The Honorable Peter DeFazio
Ranking Member
Committee on Transportation
and Infrastructure
House of Representatives
Washington, DC 20515

Dear Representative DeFazio:

Thank you for your letters to Acting Administrator Timothy O. Horne dated April 6, 2017, and June 13, 2017, regarding the lease agreement for the Old Post Office (OPO) building in Washington, DC, and the U.S. General Services Administration's (GSA) policy regarding congressional oversight requests. Your inquiries have been referred to me for response.

As noted in your correspondence, GSA responded to previous requests for information pertaining to the OPO building lease. GSA also provided briefings on this matter to your staff on December 8, 2016, and March 31, 2017. Additionally, on March 23, 2017, GSA provided the Contracting Officer's decision and accompanying documents to your staff. During the March 31 briefing, GSA addressed the issues raised in your correspondence, including the lease procurement process, the terms of the lease, the tenant's organizational structure, and GSA's Contracting Officer's determination that the tenant is in full compliance with Section 37.19, and that the lease is valid and in full force and effect.

Per subsection 1.602-1 of the Federal Acquisition Regulation, "Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings." GSA's responsibility is to ensure that terms and conditions of the lease GSA signed are fully enforced. With regard to your concerns about conflicts of interest and constitutional matters, as GSA indicated in briefings to your staff and prior correspondence, it is the responsibility of other Federal entities, including the Office of Government Ethics, the U.S. Department of Justice's Office of Legal Counsel, and the White House Counsel to evaluate those issues.

For more information on the terms and conditions of the lease, and for related documentation and communications between GSA and various organizations and entities, please visit www.gsa.gov/portal/content/305477.

With regard to your inquiry about GSA's responsiveness to congressional inquiries and requests, GSA intends to respond to all congressional inquiries. However, for oversight requests, please see the enclosed *Letter Opinion for the Counsel to the President*. In this Letter, the U.S. Department of Justice's Office of Legal Counsel determined that:

...the constitutional authority to conduct oversight—that is, the authority to make official inquiries into and to conduct investigations of Executive Branch programs and activities—may be exercised only by each chamber of Congress or, under existing delegations, by committees and subcommittees (or their chairmen).

Individual members of Congress, including ranking minority members, do not have the authority to conduct oversight in the absence of a specific delegation by a full house, committee, or subcommittee.

The Letter also states:

Accordingly, the Executive Branch's longstanding policy has been to engage in the established process for accommodating congressional requests for information only when those requests come from a committee, subcommittee, or chairman authorized to conduct oversight.

A similar letter has been sent to your colleague. If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,



P. Brennan Hart III
Associate Administrator

Enclosure



June 29, 2017

The Honorable Hank Johnson
Ranking Member
Subcommittee on Economic Development,
Public Buildings, and Emergency Management
Committee on Transportation
and Infrastructure
House of Representatives
Washington, DC 20515

Dear Representative Johnson:

Thank you for your letters to Acting Administrator Timothy O. Horne dated April 6, 2017, and June 13, 2017, regarding the lease agreement for the Old Post Office (OPO) building in Washington, DC, and the U.S. General Services Administration's (GSA) policy regarding congressional oversight requests. Your inquiries have been referred to me for response.

As noted in your correspondence, GSA responded to previous requests for information pertaining to the OPO building lease. GSA also provided briefings on this matter to your staff on December 8, 2016, and March 31, 2017. Additionally, on March 23, 2017, GSA provided the Contracting Officer's decision and accompanying documents to your staff. During the March 31 briefing, GSA addressed the issues raised in your correspondence, including the lease procurement process, the terms of the lease, the tenant's organizational structure, and GSA's Contracting Officer's determination that the tenant is in full compliance with Section 37.19, and that the lease is valid and in full force and effect.

Per subsection 1.602-1 of the Federal Acquisition Regulation, "Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings." GSA's responsibility is to ensure that terms and conditions of the lease GSA signed are fully enforced. With regard to your concerns about conflicts of interest and constitutional matters, as GSA indicated in briefings to your staff and prior correspondence, it is the responsibility of other Federal entities, including the Office of Government Ethics, the U.S. Department of Justice's Office of Legal Counsel, and the White House Counsel to evaluate those issues.

For more information on the terms and conditions of the lease, and for related

documentation and communications between GSA and various organizations and entities, please visit www.gsa.gov/portal/content/305477.

With regard to your inquiry about GSA's responsiveness to congressional inquiries and requests, GSA intends to respond to all congressional inquiries. However, for oversight requests, please see the enclosed Letter Opinion for the Counsel to the President. In this Letter, the U.S. Department of Justice's Office of Legal Counsel determined that:

...the constitutional authority to conduct oversight—that is, the authority to make official inquiries into and to conduct investigations of Executive Branch programs and activities—may be exercised only by each chamber of Congress or, under existing delegations, by committees and subcommittees (or their chairmen).

Individual members of Congress, including ranking minority members, do not have the authority to conduct oversight in the absence of a specific delegation by a full house, committee, or subcommittee.

The Letter also states:

Accordingly, the Executive Branch's longstanding policy has been to engage in the established process for accommodating congressional requests for information only when those requests come from a committee, subcommittee, or chairman authorized to conduct oversight.

A similar letter has been sent to your colleague. If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,



P. Brennan Hart III
Associate Administrator

Enclosure

Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch

The constitutional authority to conduct oversight—that is, the authority to make official inquiries into and to conduct investigations of executive branch programs and activities—may be exercised only by each house of Congress or, under existing delegations, by committees and subcommittees (or their chairmen).

Individual members of Congress, including ranking minority members, do not have the authority to conduct oversight in the absence of a specific delegation by a full house, committee, or subcommittee. They may request information from the Executive Branch, which may respond at its discretion, but such requests do not trigger any obligation to accommodate congressional needs and are not legally enforceable through a subpoena or contempt proceedings.

May 1, 2017

LETTER OPINION FOR THE COUNSEL TO THE PRESIDENT

We understand that questions have been raised about the authority of individual members of Congress to conduct oversight of the Executive Branch. As briefly explained below, the constitutional authority to conduct oversight—that is, the authority to make official inquiries into and to conduct investigations of executive branch programs and activities—may be exercised only by each house of Congress or, under existing delegations, by committees and subcommittees (or their chairmen). Individual members of Congress, including ranking minority members, do not have the authority to conduct oversight in the absence of a specific delegation by a full house, committee, or subcommittee. Accordingly, the Executive Branch’s longstanding policy has been to engage in the established process for accommodating congressional requests for information only when those requests come from a committee, subcommittee, or chairman authorized to conduct oversight.

The Constitution vests “[a]ll legislative Powers” in “a Congress of the United States, which shall consist of a Senate and House of Representatives.” U.S. Const. art. I, § 1. The Supreme Court has recognized that one of those legislative powers is the implicit authority of each house of Congress to gather information in aid of its legislative function. *See McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). Each house may exercise its authority directly—for example, by passing a resolution of inquiry seeking information from the Executive Branch. *See 4 Deschler’s Precedents of the United States House of Representatives*, ch. 15, § 2, at 30–50

(1981) (describing the practice of resolutions of inquiry and providing examples); Floyd M. Riddick & Alan S. Frumin, *Riddick's Senate Procedure*, S. Doc. No. 101-28, at 882 (1992) (“The Senate itself could investigate or hear witnesses as it has on rare occasions[.]”).

In modern practice, however, each house typically conducts oversight “through delegations of authority to its committees, which act either through requests by the committee chairman, speaking on behalf of the committee, or through some other action by the committee itself.” *Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members*, 25 Op. O.L.C. 289, 289 (2001) (“*Application of Privacy Act*”); see also Alissa M. Dolan et al., Cong. Research Serv., RL30240, *Congressional Oversight Manual* 65 (Dec. 19, 2014). As the Supreme Court has explained, “[t]he theory of a committee inquiry is that the committee members are serving as the representatives of the parent assembly in collecting information for a legislative purpose” and, in such circumstances, “committees and subcommittees, sometimes one Congressman, are endowed with the full power of the Congress to compel testimony.” *Watkins v. United States*, 354 U.S. 178, 200–01 (1957).

By contrast, individual members, including ranking minority members, “generally do not act on behalf of congressional committees.” *Application of Privacy Act*, 25 Op. O.L.C. at 289; see also *id.* at 289–90 (concluding that “the Privacy Act’s congressional-disclosure exception does not generally apply to disclosures to ranking minority members,” because ranking minority members “are not authorized to make committee requests, act as the official recipient of information for a committee, or otherwise act on behalf of a committee”). Under existing congressional rules, those members have not been “endowed with the full power of the Congress” (*Watkins*, 354 U.S. at 201) to conduct oversight. See *Congressional Oversight Manual* at 65; see also *Exxon Corp. v. FTC*, 589 F.2d 582, 593 (D.C. Cir. 1978) (“[D]isclosure of information can only be compelled by authority of Congress, its committees or subcommittees, not solely by individual members; and only for investigations and congressional activities.”). Individual members who have not been authorized to conduct oversight are entitled to no more than “the *voluntary* cooperation of agency officials or private persons.” *Congressional Oversight Manual* at 65 (emphasis added).

The foregoing reflects the fundamental distinction between constitutionally authorized oversight and other congressional requests for infor-

mation. When a committee, subcommittee, or chairman exercising delegated oversight authority asks for information from the Executive Branch, that request triggers the “implicit constitutional mandate to seek optimal accommodation . . . of the needs of the conflicting branches.” *United States v. AT&T Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977); *see also id.* at 130–131 (describing the “[n]egotiation between the two branches” as “a dynamic process affirmatively furthering the constitutional scheme”). Such oversight requests are enforceable by the issuance of a subpoena and the potential for contempt-of-Congress proceedings. *See McGrain*, 273 U.S. at 174; 2 U.S.C. §§ 192, 194; *see also* Standing Rules of the Senate, Rule XXVI(1), S. Doc. No. 113-18, at 31 (2013) (empowering all standing committees to issue subpoenas); Rules of the House of Representatives, 115th Cong., Rule XI, cl. 2(m)(1) (2017) (same). Upon receipt of a properly authorized oversight request, the Executive Branch’s longstanding policy has been to engage in the accommodation process by supplying the requested information “to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch.” Memorandum for the Heads of Executive Departments and Agencies from President Ronald Reagan, *Re: Procedures Governing Responses to Congressional Requests for Information* (Nov. 4, 1982). But a letter or inquiry from a member or members of Congress not authorized to conduct oversight is not properly considered an “oversight” request. *See Congressional Oversight Manual* at 56 (“Individual Members, Members not on a committee of jurisdiction, or minority Members of a jurisdictional committee, may, like any person, request agency records. When they do, however, they are not acting pursuant to Congress’s constitutional authority to conduct oversight and investigations.”). It does not trigger any obligation to accommodate congressional needs and is not legally enforceable through a subpoena or contempt proceedings.

Members who are not committee or subcommittee chairmen sometimes seek information about executive branch programs or activities, whether for legislation, constituent service, or other legitimate purposes (such as Senators’ role in providing advice and consent for presidential appointments) in the absence of delegated oversight authority. In those non-oversight contexts, the Executive Branch has historically exercised its discretion in determining whether and how to respond, following a general policy of providing only documents and information that are already public or would be available to the public through the Freedom of Information Act, 5 U.S.C. § 552. Whether it is appropriate to respond to re-

quests from individual members will depend on the circumstances. In general, agencies have provided information only when doing so would not be overly burdensome and would not interfere with their ability to respond in a timely manner to duly authorized oversight requests. In many instances, such discretionary responses furnish the agency with an opportunity to correct misperceptions or inaccurate factual statements that are the basis for a request.

CURTIS E. GANNON
Acting Assistant Attorney General
Office of Legal Counsel



August 23, 2017

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security
and Government Reform
United States Senate
Washington, DC 20510

Dear Senator McCaskill:

Thank you for your letter dated June 22, 2017, to Acting Administrator Timothy O. Horne requesting information pertaining to the lease agreement for the redevelopment and management of the Old Post Office building in Washington, DC. Your inquiry has been referred to me for response.

For available information on the terms and conditions of the lease, and for related documentation and communications between the U.S. General Services Administration (GSA) and various organizations and entities regarding this lease, please visit the GSA Freedom of Information Act (FOIA) Electronic Reading Room at www.gsa.gov/portal/content/305477. Please see below for responses to your specific requests.

1. *All documents related to GSA's review of the legality or validity of U.S. General Services Administration Lease Number GS-LS-116-1307 from July 19, 2016, through present.*

This information is available at GSA's FOIA Electronic Reading Room at www.gsa.gov/portal/content/305477 under GSA-2017-000447 and in the Contracting Officer's Letter of March 23, 2017. Please be advised that some documents that reflect attorney work-product, attorney-client conversations, and/or contain pre-decisional recommendations were redacted where appropriate pursuant to the fifth exemption to the FOIA, 5 U.S.C. § 552(b)(5). GSA has also withheld the names, email addresses, and telephone numbers of private individuals who are non-government employees pursuant to the sixth exemption to the FOIA, 5 U.S.C. § 552(b)(6).

2. *All communications between any GSA official and any representative of the Trump Organization or Trump Old Post Office LLC related to the legality or validity of U.S. General Services Administration Lease Number GS-LS-116-1307 from July 19, 2016, through present.*

GSA does not have any responsive information regarding this topic.

3. *A description of the internal controls GSA has put in place to monitor the "institutional measures" the Trump organization outlined in its correspondence with GSA and the Old Post Office regarding Lease Number GS-LS-116-1307.*

Internal controls already exist within the context of the ground lease between GSA and the tenant) under Lease No. GS-LS-11-1307. Under paragraph 5.3, "Statements," the tenant is required to keep proper and accurate books and records, in accordance with the Uniform System and reconciled in accordance with Generally Accepted Accounting Principles, reflecting the tenant's financial affairs. Furthermore, the GSA has the ability to monitor compliance with the "institutional measures" under the terms of the lease contained in paragraph 5.4, "Audit of Annual Statements." The tenant must furnish the Government annually, within 120 days following the end of each lease year, a complete copy of the tenant's annual audited financial statements. Paragraph 5.3 of the lease requires "the dates and amounts of distributions made on account of equity" as part of the annual audited financial statements. GSA may also review the "Statement of Cash flow" and the "unrecovered capital contribution account of DJT Holdings LLC."

4. *A description of any and all guidance provided to GSA employees to ensure that they are not subject to any undue influence or pressure regarding their management of GSA's Lease Number GS-LS-116-1307.*

All GSA employees must complete annual ethics training. As part of this training, the GSA Office of General Counsel provides training to GSA employees on the requirements for ethical conduct, including conflict of interest laws, the Procurement Integrity Act, and the Hatch Act, and advises GSA employees to disclose immediately any waste, fraud, abuse, and corruption to appropriate authorities, such as GSA's Office of Inspector General. GSA's Office of Inspector General maintains a nationwide workforce of auditors, special agents, attorneys, and other professional staff whose mission is to detect and deter waste, fraud, abuse, and misconduct and to promote economy and efficiency in GSA operations.

In addition, GSA has determined that certain employees are subject to the Office of Government Ethics (OGE) regulation 5 CFR § 2634.901 et seq., which requires that certain positions at grade 15 or below file a Confidential Financial Disclosure Report (OGE Form 450). GSA Deputy Standards of Conduct Counselors review these reports to determine whether an interest or position disclosed on the report violates or appears to violate applicable laws or regulations.

Collectively, these steps promote an environment that will deter undue influence or pressure regarding the management of GSA Lease Number GS-LS-116-1307.

5. *All communications between GSA officials and the Office of Government Ethics or the U.S. Department of Justice regarding any ethical and conflict of interest issues, including, but not limited to, those raised by U.S.C. 208 (2015), as they relate to GSA Lease Number GS-LS-116-1307.*

GSA does not have any responsive information regarding this topic.

If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,

A handwritten signature in blue ink, appearing to read 'P. Brennan Hart III', with a stylized flourish at the end.

P. Brennan Hart III
Associate Administrator



August 14, 2017

The Honorable Francis Rooney
House of Representatives
Washington, DC 20515

Dear Representative Rooney:

Thank you for your letter of June 12, 2017, regarding the display of portraits of President Donald J. Trump and Vice President Michael R. Pence at the United States Courthouse and Federal Building located at 2110 First Street, Fort Myers, FL, which is operated by the U.S. General Services Administration (GSA).

GSA is working with the U.S. Government Publishing Office (GPO) to obtain the official portraits of the President and Vice President. In January 2017, GSA placed an order with GPO for more than 5,500 portrait sets, of varying sizes, for all GSA controlled buildings and facilities. GSA has yet to receive these portraits, but communicates weekly with GPO on the status of this order. GSA will promptly display the portraits of the President and Vice President as soon as they are received.

If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Brennan Hart III", with a stylized flourish at the end.

P. Brennan Hart III
Associate Administrator



August 5, 2016

The Honorable Patrick Leahy
United States Senate
Washington, DC 20510

Dear Senator Leahy:

Thank you for your letter dated June 29, 2016, to Administrator Denise Turner Roth concerning the reprogramming of funds from the Derby Line Land Port of Entry (LPOE) project. Your inquiry has been referred to me for response.

At this time, the U.S. General Services Administration (GSA) is able to meet its immediate funding needs for other projects without the previously requested reprogramming of the Derby Line funds.

Regarding Highgate Springs, GSA will undertake several studies at this LPOE due to the planned completion of highway A35 in Canada. GSA's plan is to assess how the completion of this highway will affect traffic volumes, to identify any existing facility deficiencies, and to review if existing LPOE infrastructure addresses new Federal inspection requirements. These studies, developed in partnership with the Federal inspection agencies stationed at Highgate Springs, are scheduled to begin during the first quarter of fiscal year (FY) 2017, and will assist GSA in determining the extent of, and scheduling for, any work that may be required at this LPOE.

In conjunction with the studies to begin in FY 2017, GSA will also review any information from the U.S. Department of Homeland Security - Customs and Border Protection (CBP) that identifies needs of the Highgate Springs LPOE.

If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,

A handwritten signature in blue ink that reads "Lisa A. Austin".

Lisa A. Austin
Associate Administrator

cc: Mr. Michael Yeager, Assistant Commissioner, CBP



July 15, 2016

The Honorable Bob Goodlatte
House of Representatives
Washington, DC 20515

Dear Representative Goodlatte:

Thank you for your letter dated June 10, 2016, to Administrator Denise Turner Roth regarding possible locations for the proposed Federal Civilian Cyber Campus. The Administrator requested I respond to your inquiry.

The U.S. General Services Administration (GSA) continues to work with the U.S. Department of Homeland Security and the U.S. Department of Justice—Federal Bureau of Investigation to develop a program of requirements for the proposed Cyber Campus. Since these requirements are needed for site selection and are not yet fully developed, GSA has not yet identified a future site. At the present time, all documentation states the facility will be within the National Capital Region. Page County is outside of the Region and therefore not currently within the planned site search area.

As noted in my letter to you dated April 21, 2016, any site of a future Cyber Campus will be identified through a fair and transparent process that delivers the best value to the American taxpayer. GSA will continue to keep you apprised of this project as it develops.

If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,

A handwritten signature in cursive script that reads "Lisa A. Austin".

Lisa A. Austin
Associate Administrator



July 21, 2016

The Honorable John Cornyn
United States Senate
Washington, DC 20510

Dear Senator Cornyn:

Thank you for your letter dated June 24, 2016, regarding the Hipolito F. Garcia Federal Building and U.S. Courthouse (Courthouse), which houses the U.S. Bankruptcy Court for the Western District of Texas, executive agencies, and a U.S. Post Office.

The Courthouse and site have a rich history that has been interpreted in existing interior displays, brochures, and the Howard Norton Cook frescoes in the lobby. The 1939 murals "San Antonio's Importance in Texas History" depict many key events and individuals in Texas history, including Sam Houston, the arrival of the first conquistadors, the signing of the Texas Declaration of Independence, and the arrival of the first railroad. The outer Courthouse lobby—which holds the Cook murals—is accessible to the public. The inner lobby, with historical and informational displays, is accessible to the public after going through a building security screening.

The U.S. General Services Administration (GSA) looks forward to working with the Alamo Endowment Board to provide more historical information on this site's connection to the Alamo's 18th century inception and beyond. To date, GSA has worked with State and local leaders to interpret and preserve Texas history in the building, including consulting with the Texas Historical Commission on rehabilitation projects, working with the Bexar County Historical Commission on a historical plaque installation, and collaborating with the San Antonio Conservation Society on the building dedication after the completion of the American Recovery and Reinvestment Act rehabilitation project.

Working with the Alamo Endowment Board will be a welcome addition to GSA's current and past efforts. Mr. Steve Kline, the GSA Regional Historic Preservation Officer, will contact the Board to learn more about its master planning efforts and how GSA might help to further the interpretation of Alamo history.

1800 F Street, NW
Washington, DC 20405-0002

www.gsa.gov

If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,

A handwritten signature in cursive script that reads "Lisa A. Austin".

Lisa A. Austin
Associate Administrator



July 19, 2016

The Honorable Carolyn B. Maloney
House of Representatives
Washington, DC 20515

Dear Representative Maloney:

Thank you for your letter dated May 12, 2016, concerning GSAR Case 2013-G504 (RIN 3090-AJ51), Transactional Data Reporting. The U.S. General Services Administration (GSA) appreciates the opportunity to respond to this inquiry.

GSA gave long and thoughtful consideration to the issues raised in your letter prior to publishing the Transactional Data Reporting final rule on June 23, 2016. At several stages, GSA raised and considered the same issues as part of the deliberative process. For this reason, GSA is confident that the Transactional Data Reporting rule presents the best Government alternative for harnessing the power of procurement data analytics in order to:

- understand the prices the Government pays for goods and services,
- improve the Government's ability to conduct smarter buys, and
- achieve better value for the taxpayer.

GSA offers the following responses to the questions posed in your letter:

1. What is the anticipated financial benefit to the government if the proposal is implemented? What is this savings estimate based upon?

GSA pursued this rule after undertaking a series of smaller-scale initiatives with the use of transactional data on certain contracts, most notably through the Federal Strategic Sourcing Initiative (FSSI). GSA used transactional data to drive competition and increase transparency under FSSI, which led to prices up to 30 percent lower than comparable items available on GSA's Federal Supply Schedule (FSS) contracts. In each instance, transactional data has resulted in substantial price reductions. These empirical results were the impetus for the Transactional Data Reporting rule.

GSA expects this rule to drive savings in other ways, as well. For instance, the rule supports the category management principles of optimizing existing contract vehicles and reducing contract duplication, thereby reducing administrative cost to both the Government and contractors. The Government can also use transactional data to analyze its consumption patterns, evaluate and compare purchasing channels, and identify best-in-class solutions. Thereafter, the Government can leverage its buying

power and demand management strategies to achieve taxpayer savings as it concentrates its purchases through fewer channels, which will in turn provide lower administrative costs for both vendors and the Government alike.

2. How would the transactional data disclosure requirement improve the transparency of government contracts and the delivery of services to the federal government?

Advances in 21st century technology and modern analytics are rendering traditional vertical pricing practices obsolete. For example, the Price Reductions clause aims to guarantee that the Government receives a contractor's best price, but this clause provides safeguards only to the extent that the Government actually reviews companies' prices and identifies unreported price reductions. Unfortunately, budget and resource limits narrow the number of companies that can be reviewed effectively under the current system. In contrast, Transactional Data Reporting supports horizontal pricing techniques that ensure the Government pays a good price relative to a contractor's competition. Transactional data-fueled price analysis will enable the Government to proactively achieve upfront price savings through increased competition and, as a result, reduce the need for retroactive actions to recoup monies owed due to False Claims Act violations for noncompliance with the Price Reductions clause.

The availability of transactional data will also provide buyers with visibility into the variables that drive costs, which is key to defining requirements and developing accurate cost estimates. Likewise, agencies will gain insight into the options for satisfying common requirements, and they will be able to use the lessons learned to form the most efficient demand management strategies to meet the Government's needs.

Finally, data-driven transparency will give vendors a better understanding of market opportunities and what it will take to capture orders. This price visibility across the playing field means the Federal marketplace will no longer bear artificially inflated prices; competitors will continually offer lower prices as long as there is an opportunity to make a profit.

3. Is the removal of the Price Reductions clause from GSA contracts necessary to capture the transactional data? Are the two requirements mutually exclusive?

Initiating Transactional Data Reporting in conjunction with existing price protections would be unduly burdensome and likely counterproductive. Vendors have long cited the Price Reductions clause as GSA's most burdensome compliance requirement and have expressed concerns about the potential Transactional Data Reporting burden. If subjected to both requirements, vendors will be forced to raise their prices, or even exit the Schedules program, if increased administrative costs threaten profitability.

On the other hand, instituting a smaller scale, data-driven pricing model, while reducing the cost of doing business with the Government, will produce savings. For example, performance under the Office Supplies 3 (OS3) vehicle began in fiscal year 2015. Like

its predecessor, OS2, OS3 relies on transactional data and horizontal pricing techniques to drive savings. But unlike the Schedules-based OS2, OS3 is a standalone contract that does not include the traditional Schedules pricing protections. As such, OS3's pricing is 17 percent lower than its predecessor's prices.

4. The proposed change will maintain the Economic Price Adjustment clause that allows government prices to increase if contractor costs increase; however, it will eliminate the government price protections provided by the Price Reductions clause. What is the reason for this inconsistency? How will GSA ensure that the government will not be overcharged for goods and services? What price protections will be in place?

Vendors need to ensure profitability, and the Government must maximize taxpayer savings. While the Economic Price Adjustment clause satisfies the first objective by allowing vendors to increase prices in accordance with the commercial marketplace trends, the Price Reductions clause is increasingly ineffective for achieving the second objective.

Changes in the Federal marketplace have eroded the effectiveness of the Price Reductions clause over time. Of particular note are the explosive growth of services, the increase in share of contracts held by resellers rather than manufacturers, and the establishment of elaborate organization structures by contractors seeking to limit potential liability under the False Claims Act for failure to report price reductions. Moreover, due to the various exceptions included in the Price Reductions clause, the tracking customer feature ties pricing for reductions to quantity-of-one sales and does not impact blanket purchase agreements and order purchases that reflect volume sales. Further, many products sold under the Schedules program are commercial-off-the-shelf products or other commercial items for which the Government is not a market driver.

On the other hand, Transactional Data Reporting supports a two-tier approach to improving Schedules pricing. The first tier relates to FSS contract-level pricing. GSA Schedule contracting officers will have the benefit of transactional data, readily available commercial pricing data, and contract-level pricing data to establish contract-level pricing that is more in line with the actual prices paid by customers and varies less from the prices offered by other Schedule vendors for identical items. As previously noted, horizontal pricing techniques will enable GSA and its customers to easily evaluate the relative competitiveness of prices between Schedule vendors. This is in contrast to the traditional vertical pricing model, which assures the Government receives a contractor's best price but not necessarily a good price relative to a contractor's competition.

The second tier is pricing at the order level. Customer ordering activities regularly seek, and often obtain, discounts from contract-level prices. However, any concessions achieved are generally limited to that purchase, as ordering activities traditionally do not have visibility into the activities of their counterparts. This allows contractors to hold the line on prices to individual Government customers to avoid having to extend favorable pricing more broadly. In contrast, Transactional Data Reporting supports the broader

shift towards category management, where the Government will truly leverage its buying power by coordinating information and purchases across agencies.

Economic principles and empirical evidence support the notion that competition leads to lower pricing. Any incentive that contractors have to hold the line on pricing to individual Government customers will be overcome by their profit motive, as other suppliers will otherwise undercut artificially inflated prices. Nevertheless, GSA is implementing the rule on a pilot basis in order to test whether transactional data-fueled pricing techniques achieve the desired outcomes.

5. Can GSA collect the transactional data from currently available government systems? If not, why not?

GSA does not have the systems capability to collect transactional data from other agencies or sources. The Office of Management and Budget (OMB) issued a memorandum in July 2015 that requires all Federal agencies to move to electronic invoicing by 2018. GSA identified this as a potential alternative, but after meeting with existing electronic invoicing providers, it determined that these electronic invoicing platforms could not provide the necessary data in the near term, or in the level of detail necessary. Obstacles for leveraging electronic invoicing for this purpose include:

- an absence of invoicing data standards, which are currently being developed for implementation; and
- a lack of interoperability among Government systems, although this will also likely be addressed through the implementation of the OMB memorandum.

Consequently, GSA is continuing to evaluate solutions that rely on contractor-provided transactional data in the near term and will re-examine this requirement once the standards are developed and implemented.

6. Will GSA's proposal limit transactional data analysis to prices paid by government customers using GSA contracts? How will GSA obtain and monitor commercial pricing information to achieve best value? Will the government still benefit from price decreases in the commercial market? If so, how?

The rule applies only to GSA contracts, specifically certain Federal Supply Schedule contracts, Governmentwide Acquisition Contracts (GWACs), and Governmentwide Indefinite-Delivery, Indefinite-Quantity (IDIQ) contracts awarded by GSA. The rule does not require vendors to report transactional data on orders placed outside of these contracts and would not require them to report transactional data generated for transactions between contractors and their suppliers, or commercial-to-commercial transactions.

Although the rule removed the Price Reduction clause's price protection provision for participating vendors, order-level competition and transparency will proactively achieve the same objective without relying on retroactive enforcement. Companies seeking to

win Schedules business will offer discounts or better value than their competitors. Currently, the lack of transparency encourages contractors to offer inconsistent pricing to Federal buyers. In contrast, the availability of transactional data will mean all Federal buyers may be rewarded by the success of a single buyer, because every Federal buyer will be able to see the lowest prices paid for particular items. In turn, competing companies will have a better understanding of what it takes to win Federal business and will therefore submit stronger offers.

GSA's successful use of transactional data to date has shown that the benefits of horizontal price analysis will outweigh the value of the Price Reductions clause. While enforcing the Price Reductions clause often recoups millions of dollars, leveraging transactional data may save billions.

If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,

A handwritten signature in cursive script that reads "Lisa A. Austin".

Lisa A. Austin
Associate Administrator



July 18, 2017

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator McCaskill:

Thank you for your letter dated May 2, 2017, requesting information on plans by the U.S. Department of Defense to lease office space in Trump Tower for military operations supporting President Donald J. Trump. Your inquiry has been referred to me for response.

Enclosed please find a copy of the executed lease responsive to your request with the exception of portions of the document that we redacted under the applicable exemptions of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)).

In processing your request, the U.S. General Services Administration (GSA) has redacted the following kinds of information in accordance with the fourth exemption of the FOIA (5 U.S.C. 552(b)(4)): renewal option rental rate information, itemized operating cost related information, and certifications. Exemption 4 permits an agency to withhold trade secrets and commercial or financial information, obtained from a business, that are privileged or confidential because release of the information would involve a substantial risk of competitive injury to a business that directly or indirectly furnished information to GSA. This determination was made independently based upon our analysis and the content of the requested records.

In addition, pursuant to Exemptions 4 and 5 of the FOIA together, we redacted parts of the lease that had been manually crossed out, as they were negotiated out of this particular lease. The exemption under 5 U.S.C. 552 (b)(5) encompasses legal privileges and the deliberative process privilege, which protects information that would not be available by law to a party other than an agency in litigation with the agency. Release of this information would reveal GSA's pricing strategy and would harm GSA's negotiating position.

Additionally, in accordance with the seventh exemption of the FOIA (5 U.S.C. 552(b)(7f)), GSA has withheld information compiled for law enforcement purposes, the release of which could reasonably be expected to endanger the life or physical safety of any individual. This exemption can be used to protect information and/or persons in connection with sensitive enforcement matters and security-related information.

Furthermore, we also redacted the actual signatures and individuals' personally identifiable information appearing on the documents pursuant to the sixth statutory exemption to the FOIA (5 U.S.C. §552(b)(6)), which permits an agency to withhold personnel or similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

If you have any additional questions or concerns, please contact me at (202) 501-0163.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Brennan Hart III". The signature is stylized with a large "P" and "B", and the name "Hart III" is written in a more formal script.

P. Brennan Hart III
Associate Administrator

Enclosure